

REMARKS

The Examiner's rejections of claims 1-7 under 35 U.S.C. § 103(a) for being unpatentable over the Kaspar et al. U.S. Patent No. 4,728,538 in view of the Ruth U.S. Patent No. 2,424,056 as this rejection may be attempted to be applied against the amended claims 1-7, is respectfully traversed.

In support of this traverse, while Kaspar et al. teaches non-slip dots on a pantyhose or pair of socks Kaspar et al. does not teach a generally continuous layer of sticky, non-slip or non-skid material on the bottom of a sock and a sock having an open front end with webbings extending across the open front end from a top of the sock to a bottom or sole of the sock to provide openings through which the toes of a user can extend, the webbings including four spaced apart webbings extending across the open front end between the top of the sock to the bottom or sole of the sock to provide five specific toe hole openings in the front end of the sock for receiving the toes of a user,

Further Kaspar et al. teaches a method and an apparatus for applying the dots of non slip material. Kaspar et al. does not teach socks with a generally continuous layer of sticky, or non-slip or non-skid material on the bottom thereof. Note further that Kaspar et al. specifically teaches a latex material.

While Rose teaches hose with open toes to "promote freer circulation of the blood and to improve the condition of the skin (of the toes)", Rose does not teach or suggest an exercise sock with toe openings and webbings between the toe openings and a generally continuous sticky material or non-slip material or a non-skid material on the bottom or sole of a sock to facilitate yoga exercises, e.g., tack and grip, while wearing the socks.

Ruth's sock is not made of knit fabric for sweat absorption for the intent of keeping feet warm and absorbing sweat during exercising.

Ruth's *hosiery* is intended to be worn with shoes and keep toes from cramping.

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Applicant's sock is intended to be worn without shoes! The exposed toes are in keeping with the barefoot culture associated with yoga, pilates and the like exercise, not for dress wear. Ruth is directed to "nylons" or "hosiery" where applicant is directed to a thicker knit cotton/nylon blend, like a gym sock.

What makes applicant's sock unique is that it combines the open toe between webbings with a non-skid bottom to enable otherwise barefoot exercisers an hygienic environment, and provides sweat absorption, muscle warming, washable, and non-slip features, while enabling the barefoot feel and toe gripping ability needed for the type of exercises carried out by the user.

Furthermore, in applicant's sock, the layer of rubbery substance 18 extends slightly upwardly on each side of the sock and upwardly on the heel as shown in FIG's. 1, 2 and 3 and as now brought out in claims 8 and 9. This provides further support and non-slip when the socks are used in exercising without shoes. Note that Kaspar et al. does not provide latex dots on the sides of the sock or on the back of the heel of the sock.

The Examiner contends that it would be obvious matter of design choice to a person skilled in the art to have provided a rubbery substance of the type disclosed by applicant. This is an unfounded assertion by the Examiner, not based on solid evidence. Further, only applicant provides the choice. See Ex parte Leavell, 212 USPQ 763 where Mr. Williamowsky, speaking for the Patent and Trademark Board of Appeals stated:

"The legal conclusion of obviousness must be bottomed on a solid evidentiary base."

See also In re Fritch, 23 USPQ 2d 1780 (Fed. Cir. 1992) where the CAFC stated:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so.... The mere fact that the prior art may be modified in the manner suggested by the Examiner does

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not make the modification obvious unless the prior art suggested the desirability of the modification...."

The above remarks also apply to the Examiner's other unfounded contentions that it would be an obvious matter of design choice to a person of ordinary skill in the art (1) to have provided the thickness of the rubbery substance and (2) to have provided the sock with non-slip compositions of Kaspar et al. with the toeless hosiery of Ruth.

Note that Kaspar et al. only teaches a method and apparatus for applying dots of latex material to a bottom of a sock and Ruth only teaches providing holes in hosiery (not athletic socks) to "promote freer circulation of the blood and to improve the condition of the skin (of the toes)" when wearing shoes and not for facilitating yoga exercises, e.g., tack and grip, while wearing the socks without shoes.

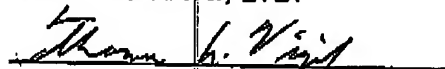
In summary, applicant submits that the sock as defined in the amended claims and new claims is not disclosed or suggested by the references cited by the Examiner, that the amended claims are clear of the art and that the application otherwise is in condition for allowance. An early and favorable action to that end is requested.

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Respectfully submitted,

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